
Indiana Board of Special Education Appeals



Room 229, State House - Indianapolis, IN 46204-2798
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BEFORE THE INDIANA BOARD OF SPECIAL EDUCATION APPEALS Amended Decision

In the Matter of C.B.,)
And the MSD of Lawrence Township)
)
Appeal from the Decision of)
Lon C. Woods, Esq.)
Independent Hearing Officer)

Article 7 Hearing No. 1363.03

Procedural History and Background

The School requested a due process hearing on June 9, 2003, to resolve disputes with the Parents. On June 10, 2003, Lon C. Woods, Esq., was appointed by the State Superintendent of Public Instruction as the Independent Hearing Officer (IHO).

The IHO sent the parties on June 13, 2003, a letter advising the parties of his appointment as IHO. On June 18, 2003, the IHO sent the parties a Notice of Pre-Hearing Conference, set for June 25, 2003. Counsel for the Student notified the IHO of her involvement and submitted a list of additional issues. A pre-hearing conference was conducted on June 25, 2003. The Student requested an extension of time. An order granting the Student's request for extension of time was issued on June 28, 2003, extending the deadline for a decision until August 12, 2003. Pursuant to I.C. 4-21.5-3-19, on June 30, 2003, the IHO issued a summary of the pre-hearing conference. The School's issue was formulated and the Student presented six counter-issues. The Student also alleged the School failed to provide access to the Student's record. The IHO determined that since the 45 days had not lapsed, the issue was not ripe for consideration. On the same date, the IHO also issued a Notice of Hearing, setting the hearing dates for July 21, 23, and 24, 2003.

On July 7, 2003, the Student's attorney submitted a list of additional issues. The School was provided an opportunity to respond to this request. The School requested the IHO issue subpoenas. The IHO issued the requested subpoenas.

A final pre-hearing conference was conducted prior to the beginning of the hearing on July 21, 2003.

The School and Student appeared in person and by their respective counsel. The Student requested the hearing be open and that the Student be allowed to briefly attend on the final day. Neither party requested separation of witnesses. The School offered Exhibits 1 through 4, inclusive, which were admitted into the record without objection. The Student offered Exhibits 1 through 11, inclusive, which were admitted into the record without objection.

The IHO issued his written decision on August 12, 2003. The following issues were delineated for the hearing:

School's issue:

1. Whether step-down transition of wrap services with the school providing all services for the student should be implemented during the 2003-04 school year.

Student's counter-issues:

2. Failure to provide a free, appropriate education program by not devising appropriate and measurable benchmarks consistent with the student's disability, by not placing her in the least restrictive environment, and by excluding her from participation in extra-curricular activities engaged in by non-disabled students;
3. Failure to provide the student an appropriate functional behavior assessment, and to implement an effective behavior intervention plan stressing positive, rather than negative, stimuli;
4. Failure to provide in-service training to teachers and the parents in matters consistent with the student's disabilities;
5. Failure to provide extended school year services in order to forestall regression, or to impede any improvement the student may have experienced;
6. Violation of procedural safeguards by altering the student's IEP without reconvening the case conference committee, by not including the required members on the committee, by not providing the parents a copy of an evaluation report at least five days prior to a conference meeting, and by not identifying alternate placement considerations and reasons for their rejection;
7. Failure to convene case conference meetings in a timely manner and to conduct an annual case review within one year;
8. Failure of the school to implement the student's IEP as written;
9. Failure to evaluate the child at least once every three years;
10. Failure to incorporate modifications of the student's length of school day in the IEP.

The issue of the School's failure to provide the student's school records within forty-five (45) days was excluded.

The IHO's Written Decision

Based on the evidence and testimony of record, the IHO determined twenty-six relevant Findings of Fact.

1. The student is thirteen (13) years of age, date of birth 11-27-89, and resides with her parents within MSD of Lawrence Township.
2. The student is classified for educational purposes as having a primary disability of autism spectrum disorder and a secondary communication disability.
3. The student is a Downs Syndrome child possessing cognitive skills at the one and one-half to two chronological age year levels. Her communication skills include one- and two-word utterances, and a limited vocabulary in signed words.
4. The student's IEP in the spring of 2002 provided for transition from elementary school to middle school with wrap services via an alternative services contract utilizing an instructional assistant assigned one-on-one responsibility for the student.
5. The student's current teacher of record participated in the spring, 2002 case conference meeting in preparation for her transition to middle school, and is the teacher of the Functional Life Skills Program attended by the student as a sixth grader at Fall Creek Valley Middle School.
6. She received wrap services by being assigned a full-time instructional assistant through an alternative services contract.
7. The Functional Life Skills Program is a communication based program emphasizing the use of communication activities throughout the daily activities. An area of the classroom was cordoned off to create an instructional cubicle for the student in order to minimize student distractions and noises.
8. A typical day began with a group activity called calendar time for approximately thirty (30) minutes, followed by a fifteen (15) break at the choice box. She then received applied behavior analysis therapy for approximately (50) minutes up to the lunch period. The student ate lunch in the classroom to avoid the noise in the cafeteria. A peer buddy was sometimes used, but usually had to keep a distance. Her afternoons involved various- group activities with puzzles, games, etc.
9. The speech pathologist's designated role was on a consultative basis. However, there were occasions when the speech pathologist worked with the student on a one-on-one basis as she noted the student was showing some progress.
10. The student participated in numerous field trips with the Functional Life Skills Program to various community landmarks; none with a general education group. Extra-curricular activities were available, but the student did not participate.
11. Participation in general education classes were included in the student's IEP for choir, physical

education and science. She occasionally went to choir when her confidence level appeared to be elevated. She rejected activity in the other classes. When she attended choir, this constituted about one-eighth of her school day. The instructional assistant would escort the student to the gymnasium for physical education, but she never participated.

12. An adapted physical education regimen had not been developed for the student.
13. An area in the classroom was cordoned off to create an instructional cubicle for the student in order to minimize distractions and noise of the other students.
14. The student ate her lunches in the classroom since she was unable to tolerate the noise in the cafeteria.
15. The case conference committee began planning for the student's 2003-04 school year some time in March 2003. Eventually the case conference committee presented an IEP on May 2, 2003, and May 31, 2003, recommending that the wrap services be stepped down by employing a transition plan from contracted services to provision of the instructional aide through the school.
16. The case conference committee was chaired by the wrap services coordinator. The Functional Life Skills Program instructor was the teacher of record. A general education teacher, the school psychologist, and the parents also participated.
17. This plan included retained the services of the contracted instructional aide during the first several months of the school year who, in turn, would work with the school's instructional assistant as part of her training.
18. The step-down plan also included adaptive behavior analysis training and other preparation for the new instructional assistant.
19. The parents' negotiations with the school included an insistence the school identify the new instructional assistant, and that said assistant be "highly qualified."
20. The school did not identify the new instructional aide since they were not sure who would be available for the 2003-04 school year.
21. The student's parents signed the IEP agreeing to the case conference committee's recommendations then rescinded their approval claiming the IEP had been altered after signing.
22. The student was evaluated at the parents' request by a multi-discipline team at the medical genetics and developmental pediatrics clinic headed by Luis Escobar, M.D. at St. Vincent's Hospital during the spring, 2003.
23. Dr. Escobar's team diagnosed a global brain dysfunction consistent with autism spectrum disorder, ruling out traumatic brain injury as her disability.

24. Dr. Escobar's team noted delayed communication skills and sensory integration deficiencies which while progress may be slow he believed could be improved through some one-on-one speech therapy and sensory integration therapy by an occupational therapist.
25. The parents incurred some out-of-pocket expenses for speech therapy after the close of the 2002-03 school year.
26. The school provided seminars on autism to parents through the Director of Special Education; in addition, the school's autism consultant organized evening classes on autism throughout the school year. The parents acknowledged they attended few, if any, of the seminars.

Based on the foregoing 26 Findings of Fact, the IHO made the following six (6) Conclusions of Law.

1. It's unclear from the evidence when the parents first raised a question with the school whether the student's primary disability was traumatic brain injury or autism spectrum disorder. Case conference committee notes in May, 2003, discuss traumatic brain injury, but don't reveal the source of this information, or whether it's based on an incident from the past. The child had been evaluated by the medical genetics and developmental pediatric clinic at St. Vincent's Hospital at about that time for a comprehensive evaluation and consultations with the medical staff. Perhaps through a miscommunication the parents carried traumatic brain injury with them back to the case conference committee, because Dr. Luis Escobar, Director of the clinic testified the student's brain dysfunction was not localized as it would be with traumatic brain injury, but rather the global nature of the injury which appeared on her EEG's led the staff to its conclusion of a hypoxic ischemic injury (a generalized oxygen deprivation), and that this condition was most closely associated with autism spectrum disorder.

Article 7 at **511 IAC 7-26-13** defines traumatic brain injury as acquired injury caused by an external physical force which adversely affects a student's one or more cognitive skills, behavior, or physical functions. Autism spectrum disorder is a lifelong developmental disability which affects verbal and nonverbal communication and social interaction adversely affecting a student's educational performance. It may also be characterized by repetitive and stereotypical behavior, resistance to changes in surroundings and routines, and unusual responses to sensory experiences. **511 IAC 7-26-2.** A comparison of these two definitions in conjunction with the findings of Dr. Escobar's staff clearly leads to the conclusion the student's disability is autism spectrum disorder.

2. The parents raised several procedural issues relative to actions of the case conference committee, and each will be discussed separately. The first was their claim the student had not been evaluated every three years. Evaluation is defined at **511 IAC 7-17-32** as the process by which the school determines whether a student is disabled and, if so, the nature of special education and related services which may be appropriate. This process may require the administration of tests or assessments. The rule stated at **511 IAC 7-25-6** requires each student receiving special education and related services be reevaluated every thirty-six (36) calendar months. The purpose of this rule is to enable the case conference committee to determine if a disability still exists, assess the student's level of performance and educational needs, decide whether the need for special education and related services still exists, and review the need for modification of services in striving

for attainment of the student's annual goals. **511 IAC 7-25-6(d)(1)(2)**. Parental consent is not required to review existing data as part of the reevaluation. **511 IAC 7-25-6(e)**. In addition, the review can occur without a called meeting. **511 IAC 7-25-6(f)**. The case conference committee may conclude that no additional assessment is necessary and is not required to do so unless requested by the parents. **511 IAC 7-25-6(g)(3)**. Therefore, the processes of evaluation, reevaluation, and assessment are not synonymous. There is no evidence the school did not triennially reevaluate the student, nor is there is evidence the parents requested an assessment which was not addressed.

3. The parents had agreed to the case conference committee's recommendations for the 2003-04 school year then later rescinded their consent claiming the IEP had been altered thereafter. During the course of a case conference committee's deliberations and ultimate recommendations, whether it be for the purpose of initial services, annual review, or termination of services, considerable data and numerous documents including notices, psycho educational reports, grant applications, meeting notes, and an IEP are amassed which become a part of the case conference committee's report. **511 IAC 7-27-5 et seq.** The parents, after agreeing to the student's placement for the 2003-04 school year, contended the IEP had been altered and rescinded their consent. As noted, a page of the meeting notes had been substituted for another and the word "draft" had been removed from the application for wrap services which was to be sent to the Indiana Department of Education. The substituted page or the removal of the word "draft" did not affect the substance of the student's IEP, and, therefore, did not constitute an alteration of the student's IEP. The parents' insistence upon including the word 'draft' on the wrap application was apparently intended to indicate their consents to the IEP as conditioned on disclosure of the identify and qualifications of the student's instructional assistant in the wrap services step-down, and, as such, is of no legal significance.

On that point, it is to be noted that once an IEP has been successfully developed it becomes the school's sole responsibility to commit the financial and personnel resources needed to implement the plan. The credentials and qualifications of the personnel assigned to implement the plan are obligations assigned to the state and local education agencies rather than parents. A student's failure to achieve projected goals, benchmarks, or objectives does not fall solely on the shoulders of the school or staff. Instead, authority to establish an accountability system for school and staff performance is given to the local school. **511 IAC 7-27-8(b)**.

4. The mother resisted the student's transition from elementary to middle school, and contended the least restrictive environment for the student was in elementary school where the educational expectations would be closer to her cognitive skills. The least restrictive environment for a disabled student is measured by a standard which requires disabled students be placed in facilities with non-disabled students to the maximum appropriate extent. **511 IAC 7-27-9**. The aforementioned section of Article 7 describes a continuum of services to be made available intended to accommodate a disabled student, and after consideration of any potentially harmful effects derivative of any service, the student shall have the opportunity to participate in nonacademic and extracurricular activities with non-disabled students as well as academic activities with non-disabled students in areas such as art, music, industrial arts, homemaking, and physical education. Further, emphasis is given to the importance of placement of disabled students in classes and buildings with their chronological peers unless the case conference committee deems another setting to be more

appropriate. **511 IAC 7-2 7-9(a)(11)**.

The least restrictive environment is, therefore, not intended to be that which may minimize frustration, but in maximizing the disabled student's opportunity to interact with non-disabled students. Transitioning from elementary to middle school can be a challenge just as it is from middle to high school because of the ever changing educational and environmental format. But adaptation to such change is all a part of growth and learning. As stated by one of the witnesses, for a student whose cognitive skills are well below his/her chronological age "moving ahead" is more important than "moving back".

5. As to the parents' assertions the school failed to follow the student's IEP as written, devised inappropriate and/or non-quantifiable benchmarks, and excluded the child from general education opportunities, one is required to examine such factors as the student's cognitive skill level, previous school experiences, and readiness for specific activities such as choir, physical education, lunchroom participation, and the like. The case conference committee's report reveals consideration was given to these details in devising the student's IEP. Hence, her placement in the middle school's Functional Life Skills Program with the support of the wrap services. The Functional Life Skills Program is a communication based program involving the introduction of language and other communication activities throughout the day. The opportunity for participation in general education classes was presented, but sensory integration issues made it difficult for her to benefit from these opportunities. She lacked the requisite readiness for meaningful participation in choir, physical education, and art with the non-disabled students.
6. A public school is not required to pay or reimburse the cost of services if the school has made a free appropriate education available to the student. **511 IAC 7-19-2(a)**. In this instance, the parents elected to incur the speech therapy expenses unilaterally. Therefore, they are not entitled to reimbursement.

Based on the foregoing, the IHO issued the following Orders:

Orders

1. The school's transition step-down of wrap services for the student during the 2003-04 school year shall be implemented as proposed.
2. The school shall revisit the student's IEP for the upcoming school year in order to incorporate additional one-on-one speech therapy by the speech pathologist so long as progress can be noted, and to introduce sensory integration therapy by the occupational therapist.
3. The parents' claims of FAPE and procedural violations are unfounded, and are hereby denied.
4. The parents' claim for reimbursement of out-of-pocket expenses for speech therapy is denied.

The IHO properly notified the parties of their respective administrative appeal rights.

On August 21, 2003, the IHO issued his Addendum to Findings of Fact, Conclusions of Law, and Orders, making additions, corrections or deletions as noted below.

1. Add to Findings of Fact as #15A the following: A functional behavior assessment was performed on April 11, 2003, and May 1, 2003. A behavior intervention plan designed to reduce inappropriate behavior was written emphasizing the typical positive reinforcements, plus access to her favorite yogurt, playing with puzzles, and the use of her make-up kit. The negative stimulus of a loud noise was apparently an isolated incident.
2. Add to Findings of Fact as #20A the following: The prospective instructional assistant, a school employee, has had seven years experience in one-on-one instruction and as an aide in the Functional Life Skills classroom, all with disabled children.
3. Add to Findings of Fact as #20B the following: The instructional assistant has had training in the Picture Exchange Communication System (PECS), adaptive behavior analysis, TEACCH, and sign language. She will also be attending autism and IntelliPics workshops.
4. Add to Findings of Fact as #21A the following: Page three of the case conference discussion notes of the May 28, 2003, meeting was rewritten and inserted in the committee's report after the parents signed the IEP.
5. Correct the wording in number three in Orders as follows: The parents' other claims of FAPE and procedural violations are hereby denied.
6. Add as number five in Orders as follows: Any other matters not specifically addressed herein are deemed to have been denied.

APPEAL TO THE BOARD OF SPECIAL EDUCATION APPEALS

Procedural History of the Appeal

On September 2, 2003, the Student requested an extension of time in which to file a petition for review. The Board of Special Education Appeals (BSEA) granted this request by order dated September 3, 2003, granting the Student an extension of time such that the petition for review would be filed by October 27, 2003, with the BSEA's decision due by November 26, 2003. On October 9, 2003, the Parents, *pro se*, submitted an unsigned letter of complaint to the Division of Exceptional Learners concerning the IHO's failure to include as an issue for hearing the School's alleged failure to provide a complete copy of the Student's file. General Counsel for the Indiana Department of Education responded to the Parents advising that the Parents would need to submit a signed letter if they wished their complaint to be processed. On October 24, 2003, the Parents re-submitted their letter of complaint with signature. The letter of complaint was referred to the BSEA for its determination as to whether the issues raised were included in or sufficiently related to the issues before the BSEA in the appeal such that the BSEA should subsume the complaint issues in the appeal. The BSEA issued its order on October 27, 2003, subsuming the following issues raised in the complaint:

1. Did the School fail to provide the Parents access to the Student's educational records pursuant to 511 IAC 7-23-1(f)? and
2. Did the Independent Hearing Officer err in not ordering the School to provide the Parents access to the Student's educational record, and, if so, was such error inconsistent with the requirements of due process under 511 IAC 7-30-3?

Student's Petition for Review

The Student's Petition for Review was filed on October 27, 2003. The Petition was lengthy and repetitious, consisting of one hundred twenty (120) pages with numerous quotes from the transcript. The Student also attached the 107 page deposition of the Student's mother as an exhibit to the Petition.

The Student argued generally that the IHO's decision was arbitrary and capricious, contrary to law and statute, in excess of the jurisdiction of the hearing officer, and unsupported by substantial evidence. The IHO glossed over or ignored substantial evidence, applied erroneous and inapplicable legal standards to the Student's claims, and abused his discretion. Further, the IHO made a series a rulings that were illogical, contrary to law or that failed to follow proper administrative procedure. He failed to issue findings of fact or make rulings on some of the issues for which evidence was presented at the hearing:

1. The deposition of the mother was admitted into evidence during the first day of the hearing, but later the IHO indicated the deposition was not in evidence and would not be admitted into evidence.
2. The IHO failed to find that case conference documents had been altered after the parents signed.
3. The IHO allowed new evidence in during the School's closing argument.
4. The IHO decided some testimony should be struck from the record even though no objection was made.
5. The IHO ordered speech therapy services and sensory integration therapy, but failed to specify duration, length and intensity of the services to be provided. Further, there were no findings that such services were appropriate and had been denied in the past.
6. The IHO had some kind of physical breakdown during a conference with the attorneys on the third day of the hearing.
7. The IHO's comments showed bias.
8. The IHO made inappropriate remarks.
9. The IHO was impatient.
10. The IHO refused to strike inappropriate comments by School's counsel, noting they were "harmless."
11. The IHO suggested the basis for the School's objection.
12. The IHO sustained a potential objection without affording the Student an opportunity to respond.
13. The IHO showed bias during his questioning of the Student's father.
14. The IHO's questioning showed a lack of understanding of the law.
15. The IHO expressed that he thought a line of questioning was irrelevant.
16. The IHO seemed to admit he wasn't paying attention.
17. The IHO failed to rule on whether the amount of Applied Behavioral Analysis (ABA)therapy provided the Student was appropriate or whether the training in ABA, autism, mental retardation and other areas of necessity of the child's aides, teachers and staff was adequate.
18. The IHO failed to rule on whether the School failed to include the proper personnel at the case conference committee meetings.

19. The IHO appears to have set a statute of limitations where none exists.
20. The evidence showed the Student hasn't made progress, but the IHO made statements and asked questions indicating he believed the Student was a lost cause such that a lack of progress was insignificant.
21. The evidence showed the School did not follow the Student's IEP, but the IHO failed to make findings of fact or rule upon that issue.
22. The IHO erred in determining the School offered appropriate IEPs.

Counsel for the Student also included objections to specific findings of fact. The Parents object to Findings of Fact Nos. 1, 7, 8, 9, 11, 14, 15, 23, and 26.

The Student requests the BSEA to scrutinize all of the orders except for the orders for the School to begin to provide speech therapy and sensory integration therapy.

School's Response to Petition for Review

On October 29, 2003, the School requested an extension of time in which to file its Response pursuant to 511 IAC 730-4(f). The BSEA granted the School an extension of time to and including December 29, 2003, to file its Response. The written decision of the BSEA is due by January 26, 2004. The School timely filed its Response to Petition for Review on December 29, 2003.

The School argued that each and every conclusion reached by the IHO is supported by the evidence and is consistent with Article 7.

1. The School's transition step-down of wrap services was correctly ordered to be implemented as proposed.
2. The School provided a free appropriate public education (FAPE).
3. The School did not violate Article 7 with respect to the development of a behavior intervention plan.
4. The School did not violate Article 7 by failing to provide training to staff and parents.
5. The School provided appropriate extended school year services (ESY). To the extent the IHO's decision doesn't address specific issues, the IHO concluded that all other matters were deemed denied.
6. The School did not deny a FAPE by violating the procedural safeguards of Article 7.
7. The School was timely in convening case conference meetings.
8. The School properly implemented the Student's IEPs.
9. The School complied with Article 7 with respect to evaluations.
10. The School complied with Article 7 with respect to length of school day.

In response to the Student's additional allegations, the School notes that an IHO is afforded broad discretion with respect to the conduct of hearings, and may conduct the proceedings in an informal manner without recourse to the technical rules of evidence and may impose conditions upon the parties necessary to avoid unreasonably burdensome or repetitious presentations. The IHO is permitted to ask questions, probe into the issues, and to attempt to focus the proceedings in ways which assist him in making an ultimate determination.

The mother's deposition was admitted into evidence by agreement of the parties, and then subsequently it "unadmitted." The School argues the best evidence of the mother's testimony was presented at the hearing. Further, the deposition would not have altered the IHO's decision.

The School disagrees with the Student's contentions concerning speech therapy. The IHO did not determine the School's speech therapy was inadequate. To the contrary, the IHO concluded the School's offered program provided a FAPE. The School moves to strike the Student's description of the IHO's statements and conduct outside of the record of the proceedings, arguing that such comments are inflammatory and an apparent attempt to discredit the IHO.

ABA therapy and instruction was appropriately combined with other strategies and integrated into all parts of the Student's program. The IHO appropriately limited the evidence to a relevant time period. The School objects and moves to strike the Student's reference to abuse allegations against the school, arguing that the Student inaccurately states the IHO's response to the testimony, and that this is not the proper forum to hear such claims.

In response to the Parents' complaint concerning access to the Student's educational records, the School noted that, as stated in the complaint, copies of the Student's records were provided on at least two separate occasions prior to the hearing, and the Parents were permitted to review the Student's records on at least three separate occasions prior to the due process hearing. A bound copy of the Student's records was provided the counsel prior to the due process hearing. The School maintains the Parents have every record that the School maintains.

On January 15, 2004, the BSEA notified the parties that this matter would be reviewed without oral argument and without the presence of the parties. The complete record was photocopied and supplied to the BSEA members on December 2, 2003.

REVIEW BY THE BOARD OF SPECIAL EDUCATION APPEALS

On January 26, 2004, the BSEA convened in Indianapolis for the purpose of conducting its review of this matter. All three members appeared. Based upon the record as a whole, the requirements of state and federal law, the Petitions for Review and the Response thereto, the BSEA now decides as follows.

COMBINED FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. The BSEA is a three-member administrative appellate body appointed by the State Superintendent of Public Instruction pursuant to 511 IAC 7-30-4(a). In the conduct of its review, the BSEA is to review the entire record to ensure due process hearing procedures were consistent with the requirements of 511 IAC 730-3. The BSEA will not disturb the Findings of Fact, Conclusions of Law, or Orders of an IHO except where the BSEA determines either a Finding of Fact, Conclusion of Law, or Order determined or reached by the IHO is arbitrary or capricious; an abuse of discretion; contrary to law, contrary to a constitutional right, power, privilege, or immunity; in excess of the IHO's jurisdiction; reached in violation of established procedure; or unsupported by substantial evidence. 511 IAC 7-30-4(j). The Student timely filed a Petition for Review. The BSEA has jurisdiction to determine this matter. 511 IAC 7-30-4(h).

2. The record reflects that the School provided the Parents several opportunities to review the Student's educational record prior to the hearing.
3. As found by the IHO, a school is required to permit a parent to inspect and review a student's educational record no later than forty-five (45) days after the request is made. However, the 45 day time limit may be shortened, as 511 IAC 7-23-1(f)(2) requires that inspection and review be provided before a due process hearing. Therefore, the IHO erred in determining the Student's issue as to access to the record was not yet ripe because 45 days had not yet lapsed from the date of the request for access to the record. However, the evidence shows the Parents were provided with several opportunities to review the Student's records and the Student's record was provided to counsel for the Student prior to the due process hearing. There was no violation of the due process requirements under 511 IAC 7-30-3.
4. The hearing involved issues addressing the appropriateness of the School's proposal to transition the provision of one-on-one services from an individual under contract to a School employee, as well as allegations of procedural violations raised by the Parents.
5. In the Petition for Review, the Student alleges a variety of due process violations as well as objections to specific findings of fact.
6. The IHO's written decision indicates that the School's exhibits 1 through 4 were admitted without objection. The transcript indicates that the Parents' depositions were identified as School's Exhibit 4 (Transcript pp. 20-21).
7. The IHO found in CL # 3 that the Student's IEP had not been substantially changed after the Parents signed.
8. Comments made by the School's attorney in closing argument had no bearing on the evidence found nor the outcome of the hearing.
9. The IHO has broad discretion as to how he will weigh the evidence.
10. Orders of the IHO must be supported by the findings and conclusions, and related to the issues raised in the hearing.
11. Comments or statements made off the record are not subject to review by the BSEA unless a party preserves such by raising the objection before the IHO when the hearing reconvenes. While the Student objects on appeal to statements made by the IHO during an attorney conference, the record fails to show the Student placed such objections on the record.
12. The IHO's comments and remarks made on the record did not rise to a level of showing bias or prejudice on the part of the IHO and the Student has failed to show any harm from any statements of the IHO.

13. The IHO has broad discretion in ruling on objections, the conduct of the hearing, admission of evidence and the questioning of witnesses. The IHO acted within his discretion in conducting the hearing.
14. The amount of ABA therapy provided to the Student was not raised as an issue. Therefore, the IHO did not err by failing to rule on whether the amount of therapy provided was appropriate. In his amended findings, the IHO did find the instructional assistant (IA) received training in the Student's areas of disability.
15. The IHO did make findings concerning the composition of the case conference committee (CCC) meetings. Although failing to address same in his conclusions, the IHO did order that no procedural violations are found. Order No. 3 should be more properly designated as a conclusion of law.
16. The IHO did not establish a statute of limitations. The IHO did properly limit the evidence and testimony to that which was relevant to the issues.
17. The IHO's statements and questions did not affect the outcome of the hearing or result in prejudice to the Student.
18. The IHO did address implementation of the Student's IEP in his decision.
19. The IHO did not err in determining the School offered an appropriate IEP.
20. Findings of Fact Nos. 1, 7, 8, 9, 11, 14, 15, 23, and 26 are supported by the evidence and testimony.
21. The School's proposed IEP provided measurable goals and objectives.
22. The Student was placed in the least restrictive environment (LRE).
23. There was no evidence the Student was denied participation in extra-curricular activities.
24. The functional behavioral assessment (FBA) and behavioral intervention plan (BIP) were appropriate and met the requirements of 511 IAC 7-17-38 and 511 IAC 7-17-8, respectively.
25. The evidence indicates that the Student's teachers received appropriate in-service training consistent with the Student's disabilities.
26. The evidence indicates ESY services designed to meet the Student's needs were provided to the Student.
27. The evidence did not establish the School failed to make a copy of an evaluation available to the Parents five (5) days prior to a case conference meeting.
28. Alternate placements were considered in developing the Student's IEPs, and the reasons for their

rejection were noted.

29. Although the CCC on a few occasions did not meet within twelve (12) months, there was no indication this technical violation resulted in any harm to the Student or a denial of a FAPE. Any delay in the convening of the CCC was minimal.
30. The evidence of record shows the Student was appropriately evaluated at least every three (3) years through either a formal evaluation or a review of evaluative materials.
31. Any shortened school day was pursuant to agreement through the IEP or was the result of unilateral action on the part of the Student's mother.
32. There are no findings or conclusions supporting the IHO's Order No. 2, nor were the provision of speech therapy and sensory integration therapy raised as issues in this hearing. The IHO exceeded his authority by addressing matters not before him.
33. Although reimbursement for out-of-pocket expenses for speech therapy was not initially raised as an issue, during the course of the hearing the Parents specifically requested the IHO to order reimbursement for their expenses. The School did not object to the addition of this issue.
34. The IHO's Orders Nos. 1, 4 and 5 are upheld.

ORDERS

In consideration of the foregoing, the Board of Special Education Appeals rules as follows:

1. The IHO's Order No. 2 is struck as it is not supported by the findings of fact and conclusions of law and it is beyond the scope of the issues raised for the hearing.
2. The IHO's Order No. 3 is designated a conclusion of law.
3. The IHO's Orders Nos. 1, 4 and 5 are upheld.
4. Any allegation of error in the Petition for Review not specifically addressed above is deemed denied.

DATE: January 28, 2004

/s/ Raymond W. Quist, Ph.D.
Raymond W. Quist, Ph.D., Chair
Board of Special Education Appeals

APPEAL RIGHT

Any party aggrieved by the decision of the Board of Special Education Appeals has the right to seek judicial review in a civil court with jurisdiction within thirty (30) calendar days from receipt of this written decision, as provided by I.C. 4-21.5-5-5 and 511 IAC 730-4(n).